

Course Outline

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| Course: | LAWS 4904 D – Advanced Legal Topics: Ocean and Coastal Law |
| Term: | Winter 2022 |
| Prerequisites: | LAWS 2908, fourth-year Honours standing |
| Class: | Day & Time: Mondays, 2:35 pm – 5:25 pm |
| | Room: Online (Zoom) |
| Instructor: | Pierre Cloutier de Repentigny |
| Contact: | Office: n/a |
| | Office Hrs: By appointment through Brightspace |
| | Email: pierre.derepentigny@carleton.ca |

CALENDAR COURSE DESCRIPTION

The topics of this course vary from year to year and are announced in advance of registration.

COURSE DESCRIPTION

This course explores the intersection of law and governance, and of oceans and coasts. It covers a breadth of issues related to the governance of oceans, including the marine environment and our impact on it, trade, piracy, natural resources exploitation, human rights, colonialism and more. These issues will be explored through various lens, such as legal geography, legal history, political economy, and Indigenous worldviews. The course also covers various physical, ecological and theoretical aspects related to oceans and coasts. While the course will include Canadian examples when relevant, the course mainly takes a global approach to the topic.

Oceans play a crucial role in humanity's past, present and future. In addition to being the source of life on Earth, oceans provide a crucial means of transportation (especially for global trade), are an important source of food and other resources, contribute to culture and spirituality, and are an essential component of the biosphere. Their proper governance is essential at ensuring a sustainable future for humanity and other lifeforms on Earth. At the end of this course, students should be able to critically examine and engage with legal issues related to oceans and coastal areas.

This course is a seminar, meaning that completing the readings and actively participating in class discussions are crucial pedagogical component of the course. Each class will start with a discussion led by students. After this initial discussion, we will have a short break and then I will lead the rest of the class to explore some concepts and issues further and have further discussions.

COMMUNICATION

In terms of communication, you should ask all **course related questions** (e.g., questions related to assignments or a topic covered in the course) on the Q&A Forum on Brightspace. This ensures that questions and answers are available for all students to see. Before asking a question, make sure it has not been asked already. **Questions related to individual issues** (e.g., extensions, accommodations, technical difficulty) should be asked directly to me via email. I will only respond to emails between 9am and 5pm on regular weekdays. For **meetings**, you will be able to book a meeting on Brightspace with me to discuss any issues related to the course or your studies. If your questions cannot easily be answered via email, I will suggest you book an appointment with me instead.

REQUIRED TEXTS

All mandatory reading and audio-visual materials will be available on Brightspace. No material needs to be purchased.

EVALUATION

Detailed instructions for the assignments will be posted on Brightspace and discussed on Zoom during class time. All assignments should be submitted on Brightspace. Evaluation for this course is divided as follow:

- Reflections 15%
- Discussion Lead 15%
- Paper Proposal* 15%
- Research Paper* 35%
- Participation 20%

*These assignments can be switched to 3 smaller essays. See below for more details.

Official disclaimer: Standing in a course is determined by the course instructor subject to the approval of the Department and of the Faculty Dean. This means that grades submitted by the instructor may be subject to revision. No grades are final until they have been approved by the Department and the Dean.

Reflections (15%)

3 short reflections—around 300 words each—posted on the Class Discussion Brightspace Forum, worth 5% each. Your reflection should relate to the readings and class discussion of a particular module. You can decide which of modules 2 to 12 you wish to reflect on. You may not select the module where you will act as discussion lead. Due 1 week after the selected class.

Discussion Lead (15%)

Starting with module 2, each class will start by a discussion led by 2 or 3 students. This discussion will start with a 5 minutes presentation by each student on the main themes of the readings, followed by a discussion led by these students. You should prepare questions and comments in advance to ensure an animated discussion. You should coordinate with your colleagues on how to divide the presentation and the questions. The student led discussion should last 1 hour (it can go over the hour if discussion is particularly animated).

Paper Proposal (15%)

A proposal summarising what you intend to do for your final research paper. The proposal should include a summary of the topic of the paper, your thesis, a draft outline of the paper and a preliminary bibliography. It should contain 2 to 3 pages of text plus the outline and bibliography. Due on March 21st.

Research Paper (35%)

A research paper of 3,750 to 5,000 words, excluding bibliography and references, exploring in dept an issue or aspect related to ocean and coastal law. Your paper needs to go beyond the readings and needs to demonstrate your ability to do research. You may explore topics not covered by the course as long as they are relevant to the overall theme. Due on April 18.

***Alternative to Paper Proposal and Research Paper (50%)**

You may elect to do 3 essays instead of the Paper Proposal and Research Paper. The first and second essay should each be 1,200 to 1,500 words, while the third should be 1,700 to 2,200 words, excluding bibliography and references. The first two essays are worth 15% each, while the last is worth 20%. Each essay should dive deeper into one of the modules (i.e., go beyond the readings) and include a thesis (i.e., you are arguing towards something). You may email me if you are unsure that your essay topic is appropriate. The first essay is due at the latest on February 21st, the second on March 21st, and the third on April 18. You may submit them earlier for faster grading.

Participation (20%)

You will get 10 points for class attendance (1 point per class, excluding the 1st class, leaving you with some flexibility in case you need to miss 1 or 2 classes) and 10 points for posting a comment or responding to a comment or reflections on the Class Discussion Brightspace Forum (1 point per comment/response with a maximum of 2 points per week).

LATE PENALTIES AND REQUESTS FOR EXTENSIONS

While active participation is a crucial pedagogical component of this course, it should not be a barrier. If you are experiencing difficulties that prevent you from actively participating in one of the workshops or that might limit your participation, or if you need to be absent, please let me know and we can discuss an appropriate accommodation to ensure that you can still benefit from the course without hardship.

For one-time accommodation or for a short extension (4 days or less), an email suffices. For a longer extension or for more holistic accommodations, send me an email with this form <https://carleton.ca/registrar/wp-content/uploads/self-declaration.pdf> filled and attached. Information on formal accommodation requests is found at the end of this syllabus.

If you submit the final essay after the deadline or get your essay topic approved after the deadline without proper justifications or without having obtained an extension, you incur the risk of getting a grade penalty of up to 5% per day.

SCHEDULE

Introduction to the course (January 10)

Reading:

- Course outline
- Ashley Rubin, “Guide to Reading Non-Textbook Texts”

Module 1: Navigating Ocean Law (January 17)

Readings:

- David Freestone “Introduction” in David Freestone, ed, *The 1982 Law of the Sea Convention at 30: Successes, Challenges and New Agendas* (Leiden: Brill, 2013) 1
- Tim Stephens and Donald R Rothwell, “The LOSC Framework for Maritime Jurisdiction and Enforcement 30 Years On” in David Freestone, ed, *The 1982 Law of the Sea Convention at 30: Successes, Challenges and New Agendas* (Leiden: Brill, 2013) 27
- Robert Hamilton, “Indigenous Legal Traditions, Inter-societal Law and the Colonisation of Marine Spaces” in Stephen Allen, Nigel Bankes & Øyvind Ravna, eds, *The Rights of Indigenous Peoples in Marine Areas* (Oxford: Hart Publishing, 2019) 17

Module 2: Deep Dive in the Oceanic Waters (January 24)

Readings:

- Birte Matthiessen, Franziska Julie Werner & Matthias Paulsen, “Ecological Organization of the Sea” in Markus Salomon & Till Markus, eds, *Handbook on Marine Environment Protection: Science, Impacts and Sustainable Management* (Cham, CH: Springer, 2018) 37
- Sandya Nishanthi Gunasekara & Md Saiful Karim, “Contemporary Issues in the Protection and Conservation of the Marine Environment” in Daud Hassan & Md Saiful Karim, eds, *International Marine Environmental Law and Policy* (Oxford: Routledge, 2019) 3
- Sunhild Kleingärtner, “A Short History of the Use of Seas and Oceans” in Markus Salomon & Till Markus, eds, *Handbook on Marine Environment Protection: Science, Impacts and Sustainable Management* (Cham, CH: Springer, 2018) 519

Module 3: A Long Walk on the Beach of the Coastal World (January 31)

Readings:

- Adalberto Vallega, *Sustainable Ocean Governance: A geographical perspective* (London: Routledge, 2001) at 136-163 (Ch 7: Sustainable development in coastal areas)
- Alastair Couper, Hance D Smith & Bruno Ciceri, *Fishers and Plunderers: Theft, Slavery and Violence at Sea* (London: Pluto Press, 2015) at 57-77 (Ch 5: Employment and Poverty in Fishing Communities)
- Nathan J Bennett et al, “Coastal and Indigenous community access to marine resources and the ocean: A policy imperative for Canada” (2018) 87 *Marine Policy* 186

Module 4: Reaping the Fruits of the Oceans (February 7)

Readings:

- Angela Lee & Pierre Cloutier de Repentigny, “Farming the Sea, a False Solution to a Real Problem: Critical Reflections on Canada’s Aquaculture Regulations” (2019) 50:1 *Ottawa Law Review* 29
- Alison Rieser, “Clupea Liberum: Hugo Grotius, Free Seas, and the Political Biology of Herring” in Irus Braverman & Elizabeth R Johnson, eds, *Blue Legalities: The Life and Laws of the Sea* (Durham NC: Duke University Press, 2019) 201
- Elspeth Probyn, “Extracting fish” in Matthew Himley, Elizabeth Havice & Gabriela Valdivia, eds, *The Routledge Handbook of Critical Resource Geography* (Oxford: Routledge, 2022) 381

Module 5: The Ocean as a Physical Space (February 14)

Readings:

- Philip E Steinberg, Berit Kristoffersen & Kristen L Shake, “Edges and Flows: Exploring Legal Materialities and Biophysical Politics of Sea Ice” in Irus Braverman & Elizabeth R Johnson, eds, *Blue Legalities: The Life and Laws of the Sea* (Durham NC: Duke University Press, 2019) 85
- Henry Jones, “Lines in the ocean: thinking with the sea about territory and international law” (2016) 4:2 *London Review of International Law* 307
- Philip E Steinberg, “Of other seas: metaphors and materialities in maritime regions” (2013) 10:2 *Atlantic Studies* 156

Module 6: The Imperial Construction of the Oceans (February 28)

Readings:

- Zsofia Korosy, “Whales and the Colonization of the Pacific Ocean” in Irus Braverman & Elizabeth R Johnson, eds, *Blue Legalities: The Life and Laws of the Sea* (Durham NC: Duke University Press, 2019) 219
- Renisa Mawani, *Across Oceans of Law: The Komagata Maru and Jurisdiction in the Time of Empire* (Durham, NC: Duke University Press, 2018) at 35-72 (Ch 1: The Free Sea: A Juridical Space)

- Surabhi Ranganathan, “Sea Change” in Annabel, Megan Donaldson & Maritti Koskenniemi, eds, *History, Politics, Law: Thinking Through the International* (Cambridge: Cambridge University Press, 2021) 285

Module 7: It’s the Economy Stupid – Oceanic Commerce (March 7)

Readings:

- Amy Braun, “‘Got Algae?’ Putting Marine Life to Work for Sustainability” in Irus Braverman & Elizabeth R Johnson, eds, *Blue Legalities: The Life and Laws of the Sea* (Durham NC: Duke University Press, 2019) 275
- Hance D Smith & Tara Thrupp, “Oil and Gas” in Hance D Smith, Juan Luis Suárez de Vivero & Tundi S Agardy, eds, *Routledge Handbook of Ocean Resources and Management* (New York: Routledge, 2015) 269
- Jeanette Reis & Kyriaki Mitroussi, “Shipping and Navigation” in Hance D Smith, Juan Luis Suárez de Vivero & Tundi S Agardy, eds, *Routledge Handbook of Ocean Resources and Management* (New York: Routledge, 2015) 331
- Anna Zalik, “World-making and the deep seabed Mining the Area beyond national jurisdiction” in in Matthew Himley, Elizabeth Havice & Gabriela Valdivia, eds, *The Routledge Handbook of Critical Resource Geography* (Oxford: Routledge, 2022) 412

Module 8: To Pillage and Plunder – Modern Day Pirates (March 14)

Readings:

- Hemut Tuerk, “Combating Piracy: New Approaches to an Ancient Issue” in Lilian del Castillo, ed, *Law of the Sea, From Grotius to the International Tribunal for the Law of the Sea* (Leiden: Brill, 2015) 469
- Alastair Couper, Hance D Smith & Bruno Ciceri, *Fishers and Plunderers: Theft, Slavery and Violence at Sea* (London: Pluto Press, 2015) at 138-62 & 192-203 (Ch 10: Abuses and Slavery at Sea; and Ch 13: Piracy and Armed Robbery)
- Douglas Guilfoyle, “Counter-Piracy Law Enforcement and Human Rights” (2010) 59 *International and Comparative Law Quarterly* 141

Module 9: Ocean Kin – Indigenous (Sea) Law (March 21)

Readings:

- Heidi Kai Guth, “Protecting and Perpetuating Papahānaumokuākea: Involvement of Native Hawaiians in Governance of Papahānaumokuākea Marine National Monument” in Jon M Van Dyke et al, eds, *Governing Ocean Resources: New Challenges and Emerging Regimes* (Boston: Martinus Nijhoff Publishers, 2013) 407
- Williamson B C Chang, “Indigenous Values and the Law of the Sea” in Jon M Van Dyke et al, eds, *Governing Ocean Resources: New Challenges and Emerging Regimes* (Boston: Martinus Nijhoff Publishers, 2013) 427
- Zoe Todd, “Fish Pluralities: Human-Animal Relations and Sites of Engagement in Paulatuq, Arctic Canada” (2014) 38:1–2 *Études/Inuit/Studies* 217
- Terri-Lynn Williams-Davidson, “Legal Personhood: A Haida Perspective”, Centre for Constitutional Studies, 10 June 2021 <<https://youtu.be/HTpQz7m4aPo?t=635>>

Module 10: All Toilets Lead to the Sea – Marine Environmental Law (March 28)

Readings:

- Abul Hasanat & Md Saiful Karim, “Ocean Governance and Marine Environmental Conservation: Concepts, principles and institutions” in Daud Hassan & Md Saiful Karim, eds, *International Marine Environmental Law and Policy* (Oxford: Routledge, 2019) 16
- Robin Churchill, “The LOSC regime for protection of the marine environment – fit for the twenty-first century?” in Rosemary Rayfuse, ed, *Research Handbook on International Marine Environmental Law* (Cheltenham, UK: Edward Elgar, 2015) 3
- Emily Barritt, “The myth of mermaids and stewardship of the seas” (2020) 11:1-2 *Transnational Legal Theory* 165

Module 11: I Think It’s Boiling – Climate Change (April 4)

Readings:

- Karen N Scott, “Climate Change and the Oceans: Navigating Legal Orders” in Myron H Nordquist, John Norton Moore & Ronán Long, eds, *Legal Order in the World’s Oceans: UN Convention on the Law of the Sea* (Leiden: Brill, 2018) 124
- Holly Jean Buck, “‘Climate Engineering Doesn’t Stop Ocean Acidification’: Addressing Harms to Ocean Life in Geoengineering Imaginaries” in Irus Braverman & Elizabeth R Johnson, eds, *Blue Legalities: The Life and Laws of the Sea* (Durham NC: Duke University Press, 2019) 295
- Cameron SG Jefferies, “International Whale Conservation in a Changing Climate: The Ecosystem Approach, Marine Protected Areas, and the International Whaling Commission” (2018) 21:4 *Journal of International Wildlife Law & Policy* 239

Class 12: The Anthropocenic Oceans (April 11)

Readings:

- Davor Vidas, “Responsibility for the Seas” in Davor Vidas, ed, *Law, Technology and Science for Oceans in Globalisation: IUU Fishing, Oil Pollution, Bioprospecting, Outer Continental Shelf* (Leiden: Martinus Nijhoff Publishers, 2010) 3
- Pierre Cloutier de Repentigny, “To the Anthropocene and beyond: the responsibility of law in decimating and protecting marine life” (2020) 11 *Transnational Legal Theory* 180

ACADEMIC ACCOMMODATIONS

You may need special arrangements to meet your academic obligations during the term. For an accommodation request the processes are as follows:

Pregnancy obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For accommodation regarding a formally-scheduled final exam, you must complete the [Pregnancy Accommodation Form](#).

Religious obligation: write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. For more details [click here](#).

Academic Accommodations for Students with Disabilities: [The Paul Menton Centre for Students with Disabilities](#) (PMC) provides services to students with Learning Disabilities (LD), psychiatric/mental health disabilities, Attention Deficit Hyperactivity Disorder (ADHD), Autism Spectrum Disorders (ASD), chronic medical conditions, and impairments in mobility, hearing, and vision. If you have a disability requiring academic accommodations in this course, please contact PMC at 613-520-6608 or pmc@carleton.ca for a formal evaluation. If you are already registered with the PMC, contact your PMC coordinator to send me your Letter of Accommodation at the beginning of the term, and no later than two weeks before the first in-class scheduled test or exam requiring accommodation (if applicable). After requesting accommodation from PMC, meet with me to ensure accommodation arrangements are made. Please consult the PMC website for the deadline to request accommodations for the formally-scheduled exam (if applicable).

Survivors of Sexual Violence

As a community, Carleton University is committed to maintaining a positive learning, working and living environment where sexual violence will not be tolerated, and where survivors are supported through academic accommodations as per Carleton's Sexual Violence Policy. For more information about the services available at the university and to obtain information about sexual violence and/or support, visit: <https://carleton.ca/equity/sexual-assault-support-services>

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation will be provided to students who compete or perform at the national or international level. Write to me with any requests for academic accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>

Accommodation for Student Activities

Carleton University recognizes the substantial benefits, both to the individual student and for the university, that result from a student participating in activities beyond the classroom experience. Reasonable accommodation must be provided to students who compete or perform at the national or international level. Please contact your instructor with any requests for academic

accommodation during the first two weeks of class, or as soon as possible after the need for accommodation is known to exist. Read more here: <https://carleton.ca/senate/wp-content/uploads/Accommodation-for-Student-Activities-1.pdf>.

For more information on academic accommodation, please visit: <https://students.carleton.ca/services/accommodation/>.